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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/786,146   | 02/24/2004  | Elizabeth Stanley    | ES-1001             | 5024             |
| 7590   | 02/16/2006  |                      | EXAMINER            |                  |
| Robert L. Rispoli<br>Clayman Tapper & Baram<br>Three Regency Drive<br>Bloomfield, CT 06002 |             |                      | GELLNER, JEFFREY L  |                  |
|  |             |                      | ART UNIT            | PAPER NUMBER     |
|  |             |                      | 3643                |                  |

DATE MAILED: 02/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 10/786,146             | STANLEY, ELIZABETH  |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | Jeffrey L. Gellner     | 3643                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 23 November 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 2-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 2-9 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All
  - b) Some \*
  - c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 2, 3, 8, and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Jollie (US 5,819,469).

As to claims 2 and 8, Jollie discloses a support for upwardly oriented foliage comprising a plurality of arcuate wall sections (shown in Figs. 1 and 7) that cooperate to define a substantially continuous shape periphery, base, and upper edge (Fig. 7); the shape periphery defining a base diameter (base as shown in Figs. 1 and 7), an upper edge diameter (upper edge as shown in Figs. 1 and 7), and at least one diameter disposed between the base diameter and the upper diameter (Figs. 1 and 2), the at least one diameter being a shorter diameter than the base diameter or upper edge diameter (shown in Figs. 1 and 7); and, a means for cooperatively engaging each one of the plurality of wall sections to at least one other section (Figs. 3-5). The support of Jollie inherently performs the method steps recited in claim 8 when used.

As to claim 2, Jollie further discloses the flange having at least one aperture (33 of Gigs. 1 and 7).

As to claim 9, Jollie further discloses a means for securing the plurality of wall sections to the ground (52a and 52b of Fig. 7).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 3, 8, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Allen (US 4,700,507) in view of Kleinert (US 2003/0029079 A1).

As to claims 2 and 8, Allen discloses a support for upwardly oriented foliage comprising a plurality of arcuate wall sections (shown in Fig. 4) that cooperate to define a substantially continuous shape periphery, base, and upper edge (Fig. 1); the shape periphery defining a base diameter (Figs. 1 and 2), an upper edge diameter (Figs. 1 and 2), and at least one diameter disposed between the base diameter and the upper diameter (Figs. 1 and 2); and, a means for cooperatively engaging each one of the plurality of wall sections to at least one other section (Figs. 3-5). Not disclosed is the at least one diameter being a shorter diameter than the base diameter or upper edge diameter. Kleinert, however, discloses a support with the at least one diameter being a shorter diameter than the base diameter or upper edge diameter (due to 16 and 22 of Fig. 2). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the support of Allen by having the at least one diameter being a shorter diameter than the base diameter or upper edge diameter as disclosed by Kleinert so as to simultaneously protect from crawling insects (see Kleinert at para. 0015). The support of Allen as modified by Kleinert inherently performs the method steps recited in claim 8 when used.

As to claim 3, the support of Allen as modified by Kleinert further disclose the flange with one aperture (9 of Figs. 4 and 5 of Allen).

As to claim 9, the support of Allen as modified by Kleinert further disclose a means for securing the plurality of wall sections to the ground (5 of Fig. 2).

Claims 4-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Allen (US 4,700,507) in view of Pattyn (US 5,878,528) of in further view of Kleinert (US 2003/0029079 A1).

As to claims 4-7, Allen discloses a support for upwardly oriented foliage comprising a plurality of arcuate wall sections (shown in Fig. 4) that cooperate to define a substantially continuous shape periphery, base, and upper edge (Fig. 1); the shape periphery defining a base diameter (Figs. 1 and 2), an upper edge diameter (Figs. 1 and 2), and at least one diameter disposed between the base diameter and the upper diameter (Figs. 1 and 2) a means for cooperatively engaging each one of the plurality of wall sections to at least one other section (Figs. 3-5); and, a base with a flange (should in Figs. 4 and 5 of Allen), the flange comprising at least one aperture (9 of Figs. 4 and 5 of Allen). Not disclosed is the at least one aperture disposed in each of the plurality of wall sections and the at least one diameter being a shorter diameter than the base diameter or upper edge diameter. Pattyn, however, discloses a support with apertures in each of the plurality of wall sections (shown in Fig. 3 and implied in Fig. 4); and, Kleinert discloses a support with the at least one diameter being a shorter diameter than the base diameter or upper edge diameter (due to 16 and 22 of Fig. 2). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the support of Allen by using the fastening means of Pattyn so as to use a vandal-resistant type of fastener (see abstract

of Pattyn) and by having the at least one diameter being a shorter diameter than the base diameter or upper edge diameter as disclosed by Kleinert so as to simultaneously protect from crawling insects (see Kleinert at para. 0015).

### ***Response to Arguments***

Applicant's arguments filed 23 November 2005 have been fully considered but they are not persuasive. The crux of Applicant's argument is that the support of Allen does not disclose or suggest a shape with the middle diameter less than both the base and upper edge diameters. Allen discloses a support with the a shape where the middle diameter is less than the base diameter (Figs. 1-3). Kleinert discloses a support where the middle diameter is less than upper edge's diameter (Figs. 1 and 2). The combination of Allen and Kleinart is proper because both deal with supports, or guards, of plants and the use of Kleinart's lip to deter insects would be useful in the support of Allen.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Demars Jr. and Jean et al. disclose in the prior art various supports with upper edge lips.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey L. Gellner whose telephone number is 571.272.6887. The examiner can normally be reached on Monday-Friday, 8:30-4:00, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 571.272.6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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Art Unit 3643